



Housing Policy and Practices Advisory Group

Staff Report: Public Participation

Issue: Public Participation in the Housing Element Update

Overview: The statute requires jurisdictions make a “diligent” effort to achieve public participation during the development of the housing element. However, there are not consistent standards on what constitutes “diligent” resulting in inconsistent efforts that may limit a jurisdiction’s ability to adequately plan for the housing needs of lower-income and special needs populations.

HCD Preliminary Proposals:

Proposal A: Require a specific public comment timeframe (30 days?) prior to sending the first housing element update draft to HCD.

Type of Recommended Change			
<input type="checkbox"/> Policy	<input type="checkbox"/> Procedural	<input checked="" type="checkbox"/> Legislative	<input type="checkbox"/> No Change

Proposal B: HCD will not review formal draft submittals without evidence of adequate public participation. (Use as a completeness threshold for review)

Type of Recommended Change			
<input type="checkbox"/> Policy	<input checked="" type="checkbox"/> Procedural	<input type="checkbox"/> Legislative	<input type="checkbox"/> No Change

Proposal C: Work with stakeholders to develop minimum criteria to make a determination of a diligent effort which could include

- Access to information (electronic, noticing, ESL (where needed))
- Outreach efforts to lower-income and special needs populations
- Timeframes for commenting (if not legislated)
- How comments were considered

Type of Recommended Change			
<input checked="" type="checkbox"/> Policy	<input type="checkbox"/> Procedural	<input type="checkbox"/> Legislative	<input type="checkbox"/> No Change

Alternatives to above proposals:

- No change in current law or practice
- Legislating specific requirements for public participation

Background Information:

Relevant Government Code Sections:

65583(c)(8) Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

65584.5(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

Discussion:

The statute requires jurisdictions make a “diligent” effort to achieve public participation during the development of the housing element. Most jurisdictions use a variety of approaches such as workshops, surveys, and targeted outreach with community representatives to garner public participation. However, there are not consistent standards on what constitutes “diligent” resulting in a variety of strategies and efforts that may or may not achieve successful public participation. As a result, housing elements may not accurately reflect the housing needs of the community. Criticisms of the process include:

- A non-inclusive process where ESL speakers are not properly noticed.
- Efforts such as sending out notices to stakeholders and holding planning commission/city council workshops are not sufficient to actually engage all segments of the population.
- Too short timeframes for comments. In doing so, the public is not provided adequate opportunity to provide comment to the jurisdiction before submittal and may not have adequate time to comment before the Department completes its review.
- Not engaging in public participation until the administrative draft is reviewed by HCD. Once an element is submitted for HCD review, jurisdictions are less likely to address public comments and revise the element, especially if HCD has not inquired or commented on an issue brought up by public comment.
- Third Party comments given directly to HCD circumvent the jurisdiction’s public participation process.
- No clear standards on what constitutes adequate evidence of public participation.

This year AB 1316 (Lopez) was introduced which would require a local government to make its draft housing element or a draft amendment to its housing element available to the public for at least 30 days prior to submitting the draft to the Department of Housing and Community Development (HCD) for review. This is a two year bill that has not passed out of its house of origin.

Current practice: See building blocks page: http://www.hcd.ca.gov/housing-policy-development/housing-element/gs_publicparticipation.php

The element must describe the following:

- The jurisdiction must make a diligent effort to include all economic segments of the community, including residents, and/or their representatives in the development and update of the housing element.
- The element should clearly describe efforts to engage the community (types of outreach, meetings, etc.) throughout the development and implementation of the housing element process.
- Describe who was invited to participate, which groups actually participated, general comments received and how comments were incorporated into the housing element.
- Describe any ongoing efforts to engage the public and stakeholders in the implementation of the housing element.

Tensions:

Local

- Communities have varying resources to engage in the public participation process.
- Flexibility is required when determining the public participation plan that best suits the community.
- Sometimes the public will not show up no matter the effort.
- Too short timeframe for completing the process between the time of the release of the RHNA and when adoption must occur due to changes in SB 375 results in truncated public participation processes.
- Need stakeholder comments at beginning of process or during public comment period rather than during HCD review when there is inadequate time to respond.

Stakeholders

- Third party comments during review are critical as it allows for engagement when a local process lacks transparency or is insufficient.
- Shortened timeframes for public participation make it difficult to provide adequate comments resulting in letters late in the process.
- There needs to be multiple points of engagement and follow-up, not just a workshop, so that limited resources can be used appropriately.

HCD Review

- Providing guidance and feedback during the review is a key part of how the Department provides technical assistance.

Relevant survey information:

HCD Review Practices

- HCD can inadvertently contribute lack of public participation by reviewing elements that have not been developed through a strong public process, reviewing elements that have not even been released to the public for review and comment prior to submission to the Department, and engaging in back-and-forth revisions to elements outside of public view.
- Streamlined review has been a major barrier to public participation and we recommend ending that practice.
- Full disclosure is needed from HCD of all formal and informal communications between HCD and jurisdictions regarding draft elements.
- Technical assistance is important but some jurisdictions are able to circumvent the public participation process by seeking review on portions of drafts that are not available to the public, and pre-review becomes pre-approval.
- HCD should not review an element until the locality demonstrates it has made a diligent effort to achieve the public participation of all income levels and ethnicities
- Many jurisdictions and at least some HCD staff appear to treat the 'public participation' requirement as perfunctory.
- HCD staff should, of course, discuss revisions with reps for the jurisdiction, but should also insist that any revisions be the subject of a robust public input process before adoption by the local government.
- HCDs technical assistance practices must be reviewed to improve transparency and opportunities for public input.
- HCD puts too much weight on their private interactions with members of the public, and do not adequately share those comments or concerns with the local jurisdictions. The community input process should be the responsibility of the local jurisdiction, not HCD.

Public Participation Criteria

- It is critical that all housing element public participation processes include the voices and concerns of lower-income residents and workers. This will often require informational materials and meetings to be translated, meetings to be held at times and locations accessible to lower-income residents and workers, consultation with organized community and advocacy groups, and other practices to ensure that populations traditionally unable to engage in the public process are able to voice their needs and concerns.

- Consistent with the duty of both the state and local jurisdictions to affirmatively further fair housing choice, as well as other legal obligations, HCD should implement minimum standards for public participation that require participation opportunities be accessible to people with limited English proficiency (LEP) and people with disabilities.
- Localities must be required to solicit public comment from the populations that are actually affected by localities' decisions on housing production: the people who would have lived there, had sufficient housing been built. Each locality must identify "local spill over zones," areas where people move when they are unable to find sufficient housing in the area.
- In general, the public is given the opportunity for comment/input with little or no background information about what is at stake in their neighborhood/community.
- Sometimes public participation in workshops is only a sham. For example, an online survey on where to locate 1,000 new "affordable" units on previously determined sites. Included no option to change to different sites, lower the number, or see what the housing would actually look like.
- Local, public comment is critical and should be formatted in a way that encourages participation. Sometimes our city governments rush this piece.
- Strengthen requirements for public participation to make the process more meaningful.
- Cities treat the housing element as irrelevant and from a separate planet when it comes to anything in it that is pro housing. Unless something is in the land use element, it doesn't exist for most cities. All increased public participation does is give more venues for NIMBY's to intimidate elected officials. For what? A document that is largely ignored once adopted anyway.
- Allow local agencies to develop their own public participation plans.
- Please recognize that not every community is politically active. Recognize when a community has virtually no interest in housing except to get cheaper rents or complain about "those people" with cheaper rents looking into their backyards.
- Citizen participation should be properly defined. There are special interest groups that may claim to represent the community, but do not.
- Public participation varies tremendously by jurisdiction. Generally more affluent communities tend to be more involved. Not sure if a one size fits all standard or standards will work.
- More robust efforts to reach out to low-income communities. Go beyond consultation and listening sessions. Representatives from low-income communities in particular should be involved in the process from the start. Implementation, evaluation, enforcement.
- Require jurisdictions to respond (in the housing element) to all public comments, identifying either how such comments were incorporated into the housing element or stating clearly the reasons for not including them.

Public Participation Timing

- Public participation must take place before a draft is submitted to HCD, and the draft must describe the public participation process that was used. Require a local public comment period of at least 30 days prior to submission.
- It is critical that minimum timeframes, such as 2 - 4 weeks, are established for public comment on drafts before a locality submits its housing element to HCD.
- HCD should not allow jurisdictions to begin a public participation process at the same time they submit a draft for formal review.
- Allow perhaps two months of public comments and government responses and don't allow post-public process comments directly at the state level since they can't be discussed at the local, public-process level.
- A longer response time than 2-4 weeks is required. People go on vacation and have commitments in the evening.
- Jurisdictions should have to provide drafts for public comment before engaging in informal discussions with HCD and getting informal approval.
- The public, local residents should have ample opportunity to provide input.
- Notification of opportunities for public participation, with sufficient advance time frame to allow participation. Avoid the perception of secret deals.
- Extend Public participation timeframes. Failure to include all public participation increases local citizen frustration leading to attempts to derail housing element updates. Longer duration participation coupled with a strong public education program can build long term support for the best inclusive programs.
- No matter what we do there will always be people who claim that they were not told in time to participate.

Third Party Comments to HCD

- Last minute comments are a problem when HCD forces cities and counties to respond to the comments. This can delay processing of a housing element and might cause a city or county to miss the deadline for adoption. Responding to last minute comments should be optional unless they expose a major issue(s) with respect to the adequacy of the housing element.
- HCD's consideration of third party comments is statutorily required as a part of the public participation process.
- Last minute third party comments submitted to HCD do not allow sufficient time for consideration and circumvent the jurisdiction's public participation process.
- Could there be some type of requirement that any concerns need to be shared with local jurisdictions before adoption of the elements in order for HCD to consider the comments in the certification review?
- HCD puts too much weight on their private interactions with members of the public, and do not adequately share those comments or concerns with the local jurisdictions. The community input process should be the responsibility of the local jurisdiction, not HCD.
- There needs to be a cut-off period.

